

## *Example*

### **Social Security (Hartman) Language**

Because Federal law contains an “offset” for workers’ compensation income benefits against social security disability benefits, it is beneficial to the employee to project the portion of settlement proceeds that represent income benefits over his or her remaining life expectancy. The offset rule provides that no combination of workers’ compensation and social security disability benefits can exceed 80% of pre-injury earnings. While there is no specific wording required by the Social Security Administration for offset (Hartman) language, the following example is one that may be used:

- Of the \$90,000.00 settlement, \$22,500 shall be paid as attorney’s fees to (insert attorney name), as attorney for the employee/claimant. The \$67,000.00 to be paid to the employee/claimant, shall be calculated without commutation of interest, but shall represent the negotiated compromise Agreement that the claimant’s life expectancy is 20.68 years forward from this date, pursuant to the Annuity Mortality Table for 1949 Ultimate, as established by O.C.G.A. §24-4-45, Appendix, Title 24, and that the settlement herein reached represents the payment of \$62.77 per week to the claimant over the balance of the 1,075.36 week life expectancy of the claimant into the future.

### **Caveats**

- ***Remember: Only social security disability benefits are subject to offset. Retirement and social security survivors’ benefits are not subject to offset because they are not based on disability.***
- The Social Security Administration will consider any amount paid in a no-liability settlement as income for offset purposes. Therefore, even though the “Covenant Not to Sue” is not sanctioned by the Board, the lifetime apportionment language should appear in the “Covenant Not to Sue” as part of an agreement between employee and employer. Munsinger v. Schweiker, 709 F.2d 1212 (8<sup>th</sup> Cir. 1983).
- PPD payments are also considered income and as such are not excluded from offset; benefits should therefore be prorated over employee’s lifetime. Davidson v. Sullivan, 942 F.2d 90 (1<sup>st</sup> Cir. 1991).
- Medical benefits to be paid as a part of the settlement are excluded from offset calculation, but be careful, Medicare will not allow shifting responsibility for legitimate expenses of a work injury from the workers’ compensation carrier to Medicare. Therefore, Medicare may refuse to pay for certain medical expenses until the portion of the lump sum has been spent and properly documented. 20 CFR 404.408(d); and, 42 C.F.R. 411.46(b)(2).

- Attorney fees and litigation costs are excluded from offset calculations.
- Generally, use of prorated lifetime apportionment should be sufficient to lessen the impact of the lump sum settlement on the employee's entitlement to Social Security Disability Income Benefits. In complicated cases, or those with high dollar settlement values, the Board urges thoughtful planning to coordinate benefit entitlement.